HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

(Chapter Viii Rule 32 (2)(b)

Description of the case.

Criminal Appeal No. 357/01
(Old No. 2990/1986)

Mohan Singh Panwar.
Vs.
State of Uttaranchal.

Approved for reporting.

~~Not approved for reporting~~

Date of decision 6th December 2006.

Initial of Judge

HIGH COURT OF UTTARANCHAL AT NAINITAL

Criminal Appeal No. 357 of 2001
(Old No. 2990/1986)

Mohan Singh Panwar s/o Mahendra Singh
Resident of Srinagar Garhwal, P.S. Srinagar
District Pauri Garhwal ..... Appellant

Versus

State of Uttaranchal .... Respondent

Sri C.K. Sharma, Advocate for the appellant
A.G.A. for the respondent.

Dated: December 6, 2006

Hon'ble Rajesh Tandon, J.

Present appeal has been filed against the judgment and order dated 7.11.1986, passed by Sri D.L. Soni, Sessions Judge, Pauri Garhwal in Sessions Trial No. 40 of 1985, thereby convicting the accused appellant under section 306 and 498-A I.P.C. and sentencing him to undergo rigorous imprisonment for five years under section 306 I.P.C. and two years rigorous imprisonment for the offence under section 498-A I.P.C. Both the sentences were directed to run concurrently.

According to the prosecution case Smt. Veena daughter of Amar Singh Pundi was married to the accused appellant Mohan Singh on 29.5.1985 according to the Hindu religious rites. Both husband and wife were living in rented house in Srinagar Town. Accused was employed in Telegraph Department. On 30.8.1985

Pratap Singh son of Vikaram Singh submitted a written report Ex.ka-1 to the S.O. Police Station Srinagar Garhwal. In this report it has been mentioned that Mohan Singh has taken his wife to hospital as she was unconscious and blue discharge was oozing out from her mouth. On the basis of written report Ex.Ka-1 chick report Ex.ka-2 was prepared by the Police and a case under section 306 I.P.C. was registered in the G.D. Thereafter, accused Mohan Singh also submitted a written report Ex.ka-3 in the Police Station, in which he stated that he was married about three months ago. Both husband and wife were residing in a rented house at Ganesh Bazar. There were strained relations between the parties. When accused Mohan Singh was in his office, his wife had consumed poison. When the accused came to his house he saw her unconscious and immediately he took her to hospital, where she died.

The Police made investigation of the case. The Investigating Officer visited the house of the accused and prepared site plan Ex.ka-4. The Investigating officer took in his possession the bed sheets, pillow cloth with stain-marks and a plastic bottle marked demoncran, containing some liquid with foil smell, a 100 grm. Packet of Glucose and utensils were also taken into custody. Post mortem examination of the dead body was conducted by Dr. M.S. Rawat on 31.8.1985 at 11 AM. According to the post mortem report cause of death could not be ascertained however, visra was preserved for chemical analysis.

After recording the statements of the witnesses and after completing other formalities the Investigating Officer has submitted charge sheet against the accused.

Charges under section 306 and 498-A I.P.C. were framed against the accused, who pleaded not guilty and claimed to be tried.

In order to prove the guilt of the accused, the prosecution examined P.W.1 Amar Singh Pundir, P.W.2 Pratap Singh, P.W.3 Suresh Chand, P.W.4 Prem Singh and P.W.5 Bhawan Singh.

Accused appellant in his statement under section 313 Cr.P.C. has stated that his relations with the deceased were not tense. He admitted that he had received a Bank Draft of Rs.4,000/- which was sent by his father-in-law. That amount was relating to the gifts received in the marriage The accused examined Santosh as D.W. 1, Narain Singh as D.W.2 and Budhi Singh Bisht as D. W. 3.

The learned Sessions Judge after considering the evidence on record convicted the accused under section 306 and 498-A I.P.C. and sentenced him to undergo rigorous imprisonment for five years under section 306 I.P.C. and two years rigorous imprisonment for the offence under section 498-A I.P.C. Both the sentences were directed to run concurrently.

Feeling aggrieved by the judgment and order passed by the Sessions Judge, present appeal has been filed by the appellant.

I have heard Sri C.K. Sharma, Advocate for the appellant and learned A.G.A. for the State.

Counsel for the accused has admitted the genuineness of inquest report and post mortem report, therefore, the formal proof of these documents was dispensed with and they were marked as Ex.ka-7 and ka-8.

There is no dispute that Smt. Veena died unnatural death. Report of visra examination Ex. Ka-10 shows that demo crone insecticide poison was found in the visra of the deceased, which proves that the death of the accused was caused due to consumption of insecticide and thus she committed suicide.

The charges levelled against the accused are two folds. The first charge against the accused person is that he treated the deceased Smt. Veena with cruelty for demand of dowry. Another charge is that accused abetted Smt. Veena to commit suicide. Much reliance has been placed by the prosecution on the letter alleged to have been written by the accused and delivered to the Investigating Officer on 30.8.1985 just after the incident in his rented room. This letter Ex.ka-3 reads as under:

सेवामे

श्रीमान थानाध्यक्ष, श्रीनगर गढ़वाल

;उ0 प्र0

महोदय

आज दिनांक ३0.८.८५ को मेरी पत्नी श्रीमती बीना पंवार ने जहर खा लिया है जिसको कि मै स्थानीय चिकित्सालय में ले गया।

महोदय इससे पूर्व तीन माह पहले मेरी शादी हुयी थी और तभी से हमदोनो साथ गणेश बाजार श्रीनगर श्री राकेष तोमर के मकान में किराये दार के रूप में रह रहे हैं मित्रो के घर आने जाने के विवाद को लेर प्रायः हम दोनो में तकरार हुआ करती थी। कुछ दिनों पूर्व मेरे संसुर जी आये थे उनको भी मैने इस घटना से अवगत करा दिया था उन्हाने दोनेा को एक दूसरें को समझाने के लिए कहा था कल दिनांक २६.८.८५ को श्याम हमारे बीच घरेलू वातो पर विवाद हुआ था जिसमें मैने पत्नी के सामने यह कहते हुये कि मुझे अब जागी बन कर जीना है और अपने तमाम कपउे केवल एक कुर्ता पजामा तथा कमीज पैट के सिवा पहने का सौक नहीहै सब फाड़ दिये आज दिनांक ३0.८.८५ को पढ़ाई के लिए कहने पर फिर से तकरार हुयी और मै कल शाम का खाना खा कर अपने आफिस

में लगभग 11 बजकर 50 मिनट पर छुटटी की अर्जी देने व पे लेने के लिए गया इसके बाद जैसे ही मै यह कार्य निपटाकर आया तो मुझे अपनी पत्नी द्वारा किया गया कार्य दिखाई पड़ा कि वह विस्तर पर लेटी है और इसके मुह से झाग दिकल रहा है मैने तुरन्त पडोसीको बुलाया और उसे स्थानीय चिकित्सालय ले गया तथा मृतधोषित होते ही मै यहॉ थाने में चला आया और तहरीर दाखिल की। रिपोर्ट लिखकर उचित कानूनी कार्यवाही की जाय।

The Sessions Judge has also based his findings on this letter Ex.ka-3. This letter addressed to the S.O. Police Station, Srinagar is said to have been handed over to the Investigating Officer by the accused when he visited the place of occurrence i.e. the rented room of the accused. However, the underlined substance written in this letter i.e. मृतघोषित होते ही मै यहॉ थाने में चला आया और तहरीर दाखिल की does not corroborate the statement of the Investigating Officer P.W.4 Prem Singh, who has stated that the accused had given this letter to him in his room, when he visited his room during investigation. Thus if this letter is to be treated as confession of the guilt by the accused, this document is not admissible in evidence under Section 25 and 26. The Bombay High Court in the case Ram Singh vs. State of Maharashtra, 1999 Cr.LJ 3763 (Bom.) has held that any confessional statement given by accused before police party is inadmissible in evidence and cannot be brought on record by the prosecution and is insufficient to convict the accused.

Apex Court in the case of Ballu Das vs. State of Bihar, (1998) 8 SCC 130, considered the provisions of Section 25 of Evidence Act and has held as under:

"The confessional statement, Ex. 5, stated to have been made by the appellant was before the police officer in charge

of the Godda Town Police Station where the offence was registered in respect of the murder of Kusum Devi. The FIR was registered at the police station on 8-8-1995 at about 12.30 p.m. On 9-8-1995, it was after the appellant was arrested and brought before Rakesh Kumar that he recorded the confessional statement of the appellant. Surprisingly, no objection was taken by the defence for admitting it in evidence. The trial court also did not consider whether such a confessional statement is admissible in evidence or not. The High Court has also not considered this aspect. The confessional statement was clearly inadmissible as it was made by an accused before a police officer after the investigation had started."

More so, this document has not been placed before the accused in his statement under section 313 Cr.P.C. and no question has been asked from him regarding this document and the alleged circumstances described in the document.

Incriminating circumstances must be put to the accused. If they are not so put, they cannot be taken into consideration.

Apex Court in the case Jai Dev v. State of Punjab AIR 1963 SC 612, on the provisions of Section 313 Cr.P.C. (old Sec. 342 Cr.P.C.) has observed as under

"***21.*** *In support of his contention that the failure to put the relevant point against the appellant Hari Singh would affect the final conclusion of the High Court, Mr Anthony has relied on a decision of this Court in Hate Singh Bhagat Singh v. State of Madhya Bharat. In that case, this Court has no doubt referred to the fact that it was important to put to the accused*

each material fact which is intended to be used against him and to afford him a chance of explaining it if he can. But these observations must be read in the light of the other conclusions reached by this Court in that case. It would, we think, be incorrect to suggest that these observations are intended to lay down a general and inexorable rule that wherever it is found that one of the points used against the accused person has not been put to him, either the trial is vitiated or his conviction is rendered bad. The examination of the accused person under Section 342 is undoubtedly intended to give him an opportunity to explain by circumstances appearing in the evidence against him. In exercising its powers under Section 342, the court must take care to put all relevant circumstances appearing in the evidence to the accused person. It would not be enough to put a few general and broad questions to the accused, for by adopting such a course the accused may not get opportunity of explaining all the relevant circumstances. On the other hand, it would not be fair or right that the court should put to the accused person detailed questions, which may amount to his cross-examination. The ultimate test in determining whether or not the accused has been fairly examined under Section 342 would be to enquire whether, having regard to all the questions put to him, he did get an opportunity to say what he wanted to say in respect of prosecution case against him. If it appears that the examination of the accused person was defective and thereby a prejudice has been caused to him that would no doubt be a serious infirmity.

Thus in the present case letter Ex.ka-3 has not been put up before the accused in his statement under section 313 Cr.P.C. and it cannot be considered as an evidence against him.

There is no direct evidence against the accused. The prosecution has tried to prove its case against the accused by adducing oral evidence and has examined five witnesses at all.

P.W.1 Amar Singh, father of the deceased in his examination of Chief has stated that the relations between Mohan Singh and Veena were not cordial. He has stated that he visited the residence of the accused at Srinagar on 14th June and he found that the relation of his daughter and son in-law were tense. He thereafter went to the village of the accused to meet his brother Ranjeet Singh. Ranjeet Singh told this witness that Mohan Singh needs money and he (the witness) should send some money to Mohan Singh. P.W.1 Amar Singh has stated that when he returned to Srinagar he found that there was no tension between Mohan Singh and his daughter. He has stated that he sent a draft of Rs.4,000/- to accused Mohan Singh by registered post. This witness has also stated that Mohan Singh got admission of deceased Veena in M.A. This witness has stated that Veena told to her friends that she was not happy. However, in his cross-examination he has stated that he received two letters from Veena from 15th August till 30th August but there was no mention regarding demand of dowry or harassment by the accused. This witness has categorically stated in his cross examination that Mohan Singh has not demanded cash from him. His daughter also did not tell him that Mohan Singh demanded cash amount.

P.W.2 Pratap Singh is the alleged scriber of the written report Ex.ka-1. He has stated that on 28.8.1985 he went to the room of Mohan Singh. He denied that any quarrel over took place between Mohan Singh and his wife. In his cross examination this witness has submitted that report Ex.ka-1 was written by him on the dictation of Daroga Ji in the Police Station. Thus the F.I.R. has lost its evidential value as the same was scribed on the dictation of the police.

P.W. 3 Suresh Chand was the class mate of P.W.2 Pratap Singh. Both these witnesses were living in the same building where Mohan Singh and his wife were living. This witness has submitted that he and his friend Pratap Singh helped Mohan Singh in carrying Smt. Veena to the hospital. He denied that any quarrel was took place between Mohan Singh and his wife one day before the incident. Thus the evidence of this witness is not helping the prosecution in any way to prove the guilt of the accused.

P.W.4 Prem Singh Dhania and P.W.5 Bhawan Singh Azad are the investigating officers of this case. They are the formal witnesses.

Section 306 I.P.C. provides that if any person commits suicide, whoever abets the commission of such suicide, shall be liable to be punished. The ingredients of abetment are set out in Section 107 IPC, which reads as under:

107. Abetment of a thing. A person abets the doing of a thing, who First .Instigates any person to do that thing; or

Secondly. Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal

omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

Thirdly. Intentionally aids, by any act or illegal omission, the doing of that thing.

There is no direct evidence adduced by the prosecution that the accused-appellant having abetted Veena into committing suicide. The prosecution has relied on Section 113-A of the Evidence Act, which reads as under:

113-A. Presumption as to abetment of suicide by a married woman. When the question is whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband and subjected her to cruelty, the court may resume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband.

Explanation. For the purpose of this section, cruelty shall have the same meaning as in Section 498-A of the Indian Penal Code (45 of 1860).

A bare reading of Section 113-A shows that to attract applicability of Section 113-A, it must be shown that (*i*) the woman has committed suicide, (*ii*) such suicide has been committed within a period of seven years from the date of her marriage, (*iii*) the husband or his relatives, who are charged had subjected her to cruelty. On existence and availability of the

abovesaid circumstances, the court *may presume* that such suicide had been abetted by her husband or by such relatives of her husband.

It is beyond doubt that Veena did commit suicide. Undisputedly, such suicide has been committed within a year of the date of marriage.

Cruelty has been defined under section 498A as under:

Explanation- For the purpose of this section "Cruetly" means-

(a) any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of a woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

In the present case father of the deceased P.W.1 Amar Singh has categorically stated that accused Mohan Singh never made demand of any cash amount. He has stated in the following words:

पन्द्रह से बीस अगस्त के दौरान दो चिठिठयॉ मुझे बीना की प्राप्त हुई थी उन चिठठयों में दहेज अथवा परेशानी के वावत कुछ नही लिखा था

* ***** ********** ********** ********** *********

मोहन सिंह ने मुझसे नकद रूपया की मॉग नही की थी। मेरी लड़की ने मुझे यह नही बताया था कि मोहनसिंह नकद रूपया चाहते थे।

Aforesaid statement of the father of the deceased clearly goes to shows that deceased Veena has not been harassed by the accused to met any unlawful demand for any property or valuable security.

The prosecution has examined P.W.2 Pratap Singh who is the witness of F.I.R. This witness in his examination-in-chief has denied that there was any quarrel between Mohan Singh and his wife. This witness also disowned the facts mentioned in the F.I.R. by stating that the report has been scribed by him on the dictation of Daroga Ji. P.W.3 Suresh Chand has also not supported the prosecution case in his evidence.

Accused has examined D.W.1 Santosh, D.W.2 Narayan Singh and D.W.3 Budhi Singh Bisht. All these witnesses have stated that no quarrel has taken place between Mohan Singh and his wife in their presence.

From the evaluation of the evidence and having gone through the oral evidence adduced and the documents available on the record, I am satisfied that the present case is not a case of dowry death nor the deceased having been instigated into committing suicide for her failure to satisfy the dowry demands of the accused appellant. The prosecution has utterly failed to prove its case against the accused appellant and the appellant deserves to be acquitted.

In view of the above discussion, appeal is allowed. Conviction and sentence awarded by the Sessions Judge, Pauri

Garhwal under section 498-A and 306 I.P.C. are set aside and the accused appellant is acquitted. The appellant is on bail. His bail bonds are cancelled and sureties are discharged.

Dated: 6.12.2006 **Rajesh Tandon, J.**

*Dhyani